IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 6085 OF 2007
in
FERA APPEAL NO.85 OF 2007

Vinod Solanki .. Plaintiff

vs

Union of India & ors .. Defendants

Mr.Vikram Nankani with Mr.Khokhawala i.b Nankani & Associates for Appellant
Mr.A.S.Rao with Mr.H.V.Mehta for Respondents

CORAM : F.I.REBELLO AND
R.S.MOHITE, JJ

DATED : 30TH NOVEMBER, 2007

JUDGMENT (Per F.I.Rebello, J)

1. The appellant had preferred an appeal being Appeal No.160 of 1996 before the Appellate Tribunal for Foreign Exchange. That appeal was dismissed by an order dated 16th July, 2007. The appellant has preferred the present appeal against the said order.

2. By an order dated 19th March, 1006 the Adjudicating Officer imposed a consolidated penalty of Rs.10,00,000/- against the appellants for contravening the provisions of section 8 (3) of FERA to the extent of US dollars 34,230 for his failure to utilise the said foreign exchange for the purpose it was released to him and further under section 9 (1) (a) of the FERA for the same amount being remitted outside India without the permission of the Reserve Bank of India.

3. A search was carried out in the premises of the appellant which resulted in the seizure of incriminating documents and Indian currency to the tune of Rs.2,65,000/. His statement was recorded. In the statement, various facts were set out. Before the tribunal, it was contended that the provisions of section 8 (3) was not attracted and at the highest it would be a case whether section 48 of FERA would be applicable. It was further set out that the retracted confessional statement which was retracted on the first available opportunity was relied upon. The said statement was not corroborated in material particulars. Hence, the impugned order was liable to be set aside. It was further submitted that there was no evidence to prove that the foreign exchange was remitted to Hongkong and no charge was proved against the appellant under section 9 (1) (a).

4. On the other hand, on behalf of the revenue it was contended that the foreign exchange is acquired by the appellant on the basis of forged documents and that an offence under section 8 (3) and 9 (1) (a) of FERA were fully proved. It was contended that there was sufficient material to prove the allegations against the appellant.

5. After hearing the counsel for the parties, contention urged that the show cause notice was vague based on the judgment cited were rejected as

opportunity was given to the appellant. A finding was recorded that the foreign exchange was acquired on the basis of forged documents and the same were transferred through Standard Chartered Bank, Asian House VI Branch and American E.Bank Central Branch, Hongkong maintained by foreign nationals and he failed to import any rough diamonds for which purpose the same was acquired. It was also noted that though the confessional statements were retracted, the retraction would not bar the confessional statements which was considered. The tribunal held that there was no material produced to show that the statements were recorded under threat and coercion. Reliance was placed on the judgment of the Supreme Court in KTMS Mohd vs Union of India 1992 SCC 178 and consequent to the judgment the tribunal also noted that along with the confessional statement there was documentary evidence coupled with attendant ciricumstantial evidence on record to demonstrate and prove the charges against the appellant. It further noted that the alleged facts relating to the said clandestine dealings being in the special or peculiar knowledge of the appellant and could have been explained by him only. Considering the judgment in Collector of Customs,Madra & ors v.D.Bhoormul AIR 1974 SC 859 the confessional statement was relied upon. The learned tribunal also held that the appellant had not been able to discharge the burden.

6. For the aforesaid reasons, the tribunal held that there was no material in the appeal and accordingly dismissed the same.

7. We have considered the contentions. We are in agreement with the learned tribunal that the mere bald statement that the confessional statements were recorded under coercion and durress by itself is not sufficient to discard the said confession. The burden is on the person retracting the confessional statement to lead some evidence as to why the confessional statement has to be rejected. No evidence on that count was led. Coupled with the confessional statement wherein some facts were recorded which was personal to the appellant alone, there were other deocumentary evidence coupled with the attendant circumstantial as noted by the tribunal to demonstrate and prove the charges against the appellant. In other words, there was material to support the confessional statement, which was relied upon to hold that the appellant guilty.

The tribunal also concurred with the finding that the foreign exchange was obtained on forged import documents and the same was remitted abroad to foreign nationals. We have no reasons to differ or take a different view.

8. In our opinion, these are purely findings of

fact. We do not find any perversity in the said findings and consequently, in our opinion there is no merit in this appeal which is accordingly dismissed.

(F.I.Rebello, J)

(R.S.Mohite, J)